

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

IN RE: § Civil Action No. B:10-cv-00020  
BORDER ANESTHESIA PC, §  
Debtor. §  
\_\_\_\_\_  
MICHAEL B. SCHMIDT, TRUSTEE §  
OF THE ESTATE OF BORDER §  
ANESTHESIA SERVICES, P.C. and §  
REGINALD BERRY, §  
Plaintiffs, §  
VS. § Consolidated Adversary No. 07-02098  
DOUGLAS MCKEE, INDIVIDUALLY §  
and d/b/a DOUGLAS C. MCKEE, CRNA, §  
P.C., VIJI ROBERTS, INDIVIDUALLY §  
and d/b/a VIJI ROBERTS ANESTHESIA §  
CRNA, P.C., MARY WEATHERS, §  
MARTIN POWERS, INDIVIDUALLY §  
and d/b/a POWERS ANESTHESIA §  
SERVICES, P.C., WILLIAM T. GRADY, §  
JR., WILLIAM WRENCH, and EVELYN §  
WILLIAMS, COLUMBIA VALLEY §  
HEALTHCARE SYSTEM, LP d/b/a §  
VALLEY REGIONAL MEDICAL §  
CENTER and RIO GRANDE §  
ANESTHESIOLOGISTS, P.A., §  
Defendants.

**PLAINTIFFS' RESPONSE TO**  
**DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, **MICHAEL B. SCHMIDT, TRUSTEE, AND REGINALD BERRY**, Plaintiffs in the above numbered and styled cause of action, and files this their PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER, and in support of said response would respectfully request this Honorable Court

to DENY Defendant's Motion for Protective Order and would show the Court the following:

**A. EVIDENCE SUPPORTING NEED FOR DOCUMENTS**

1. A party can discover any non-privileged matter that is relevant to any party's claim or defense, and such information is deemed relevant when it is reasonably calculated to lead to the discovery of admissible evidence. FRCP 26(b)(1). A party may also discover the financial information of a business or individual if it is relevant to the issues of the lawsuit. *Yancey v. Hooten*, 180 F.R.D. 203, 215 (D. Conn.1998).
2. Plaintiffs seek information related to medical claims that were billed to Defendants. The information sought is relevant to Plaintiffs' federal and state causes of action and is reasonably calculated to lead to the discovery of admissible evidence that would show that Defendants not only interfered with the contract between Border Anesthesia Services, P.C. and the Certified Registered Nurse Anesthesiologists ("CRNAs") but did so in furtherance of an anti-competitive agenda in a manner that diverted claims and funds from Border Anesthesia Services, P.C. and led to damages suffered by Plaintiffs, which include, but are not limited to, the loss of income and loss of profits.
3. Further, Plaintiffs are not seeking "individually identifiable health information" as defined in 45 C.F.R. § 160.103 and which are protected by the *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") issued by the U.S. Department of Health and Human Services in compliance with The Health Insurance Portability and Accountability Act of 1996 (HIPPA), Public Law 104-191. Plaintiffs do not seek to discover the identity or demographic information of any patients

whose medical claims may be related to Plaintiffs' discovery request, and in the interest of privacy, Plaintiffs are not opposed to having Defendants redact such information from their responses to Plaintiffs' Request for Production of Documents.

**B. DEFENDANT IS NOT ENTITLED  
TO A PROTECTIVE ORDER**

4. The Defendant is not entitled to a protective order which would forbid the disclosure or discovery of evidence. Defendant is a "health care provider" (as defined in 45 C.F.R. § 160.103) who may disclose "protected health information" (as defined in 45 C.F.R. § 160.103) in the course of a judicial proceeding and in response to an order from the court, provided that the Defendants disclose only the protected health information expressly authorized by such order, as pursuant to 45 CFR § 164.512.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, MICHAEL B. SCHMIDT, TRUSTEE, AND REGINALD BERRY, pray that this Court DENY, Defendants' Motion for Protective Order.

RESPECTFULLY SUBMITTED,  
**R. W. ARMSTRONG & ASSOCIATES**  
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/s/ R. W. Armstrong  
R. W. Armstrong, State Bar # 01323500  
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**CERTIFICATE OF SERVICE**

I, R. W. ARMSTRONG, hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER** was on this, the 3<sup>rd</sup> day of February, 2011, delivered via certified mail, return receipt requested, upon the following counsel of record:

Eddie Trevino, Jr.  
**TREVINO & BODDEN**  
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Brownsville, Texas 78520

s/ R. W. Armstrong  
**R.W. ARMSTRONG**